



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 163/PUU-XXI/2023**

**Concerning
Dismissal of Pretrial Petition**

Petitioner	: Imam Subekti
Type of Case	: Judicial Review of Law Number 8 of 1981 concerning the Indonesian Criminal Procedure Code against the 1945 Constitution of the Republic of Indonesia (1945 Constitution);
Subject Matter	: Judicial Review of Article 82 paragraph (1) letter d and Article 83 paragraph (1) of Indonesian Criminal Procedure Code against Article 28D paragraph (1), Article 28I paragraph (1) and paragraph (5) of the 1945 Constitution;
Verdict	: 1. To declare that the Petitioner's petition regarding the review of the norm of Article 83 paragraph (1) of Indonesian Criminal Procedure Code is inadmissible. 2. To dismiss the remainder of the Petitioner's petition.
Date of Decision	: Wednesday, January 31, 2024
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who works as a stonemason. In this case, the Petitioner believes that his constitutional rights are potentially injured by the enactment of Article 82 paragraph (1) letter d and Article 83 paragraph (1) of the Indonesian Criminal Procedure Code.

Regarding the Court's authority, the Petitioner petitions for judicial review of Article 82 paragraph (1) letter d and Article 83 paragraph (1) of the Indonesian Criminal Procedure Code against Article 28D paragraph (1), Article 28I paragraph (1) and paragraph (5) of the 1945 Constitution, therefore the Court has the authority to hear the Petitioner's petition;

Regarding the Petitioner's legal standing, the Court is of the opinion that the Petitioner as an individual Indonesian citizen who works as a stonemason has been able to describe the presumed injury of his constitutional rights due to the enactment of the of Article 82 paragraph (1) letter d and Article 83 paragraph (1) of the Indonesian Criminal Procedure Code. The Court is of the opinion that the presumption of constitutional injury is specific and actual in nature. The Petitioner has also been able to describe that the presumed injury of his constitutional rights has a causal relationship (*causal verband*) with the enactment of the norms being petitioned for review. Therefore, if the *a quo* petition is granted, the presumed constitutional injury as described will no longer occur. Therefore, regardless of whether or not the unconstitutionality of the norms being petitioned for review is proven, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Whereas since the petition of the Petitioner is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54

of the Constitutional Court Law.

Whereas before further considering the arguments of the *a quo* petition of the Petitioner, the Court will first consider the Petitioner's petition in relation to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (Constitutional Court Regulation 2/2021), so that the *a quo* norms may be resubmitted. Upon careful examination, the provisions of the norms of Article 82 paragraph (1) letter d and Article 83 paragraph (1) of the Indonesian Criminal Procedure Code have been submitted for review and have been decided in several Decisions of the Constitutional Court, namely the Decision of the Constitutional Court Number 5/PUU-VI/2008 which was declared in a plenary session open to the public on 13 March 2008, the Decision of the Constitutional Court Number 41/PUU-XIII/2015 which was declared in a plenary session open to the public on 20 October 2015, the Decision of the Constitutional Court Number 102/PUU-XIII/2015 which was declared in a plenary session open to the public on 9 November 2016, the Decision of the Constitutional Court Number 42/PUU-XV/2017 which was declared in a plenary session open to the public on 10 October 2017, the Decision of the Constitutional Court Number 66/PUU-XVI/2018 which was declared in a plenary session open to the public on 30 October 2018, and the Decision of the Constitutional Court Number 27/PUU-XXI/2023 which was declared in a plenary session open to the public on 25 May 2023. Upon further examination, between these *a quo* decisions and the Case Number 163/PUU-XXI/2023, there are differences in the reasons for reviewing Article 82 paragraph (1) letter d and Article 83 paragraph (1) of the Indonesian Criminal Procedure Code so that, regardless of whether the substance of the *a quo* petition is legally justifiable or not, formally the *a quo* petition, pursuant to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of the Constitutional Court Regulation 2/2021 may be re-submitted for review.

Whereas the Petitioner in this case believes that the *a quo* norms are contrary to Article 28D paragraph (1), Article 28I paragraph (1) and paragraph (5) of the 1945 Constitution, for reasons which are substantially as follows:

1. Whereas according to the Petitioner, the enactment of Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code has multiple interpretations and thus it has given rise to legal uncertainty regarding the pretrial petition. This condition can be used arbitrarily by individuals in the court, especially the Chief Justice of the District Court. He experienced this arbitrary action when he submitted a pretrial case at the Fakfak District Court, the pretrial hearing was postponed because the respondent was unable to attend and the pretrial hearing was held at the same time as the hearing of the subject matter. Therefore, the pretrial case submitted by the Petitioner was dismissed pursuant to Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code as interpreted by the Decision of the Constitutional Court Number 102/PUU-XIII/2015;
2. Whereas according to the Petitioner, the pretrial petition submitted can be decided first and in order to realize legal justice and legal benefits, in principle it is related to the existence of legal norms that regulate the same things but do not overlap with each other. In addition, normatively legal certainty exists when a regulation is made and promulgated with certainty, and it regulates clearly, does not give rise to doubt or multiple interpretations, so that there is no contradiction or conflict of norms, and in order to guarantee the constitutional rights of the defendant/petitioner of the pretrial. Therefore, the enactment of Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code is contrary to Article 28D paragraph (1), Article 28I paragraph (1) and paragraph (5) of the 1945 Constitution.
3. Whereas pursuant to the description of the aforementioned arguments, the Petitioner petitions for the Court substantially as follows:

- (1) To declare that Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code is contrary to the 1945 Constitution and it has no binding legal force.
- (2) Article 83 paragraph (1) of the Indonesian Criminal Procedure Code is contrary to the 1945 Constitution and it has no binding legal force to the extent that it is no interpreted as "it may not be re-submitted for a review".

Whereas the constitutionality issue being questioned by the Petitioner is the enactment of Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code relating to the dismissal of the pretrial petition because the subject matter of the case has been transferred to the District Court which according to the Petitioner has multiple interpretations, has given rise to legal uncertainty and can be used to act arbitrarily by the court individuals, especially the justice who hear the pretrial case as experienced by the Petitioner. To answer this issue, it is important for the Court to first quote again the legal considerations of the previous Court decision regarding the constitutionality of Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code, namely as decided in THE Decision of the Constitutional Court Number 102/PUU-XIII/2015, Sub-paragraph **[3.12.1]**, on page 50 to page 51 which substantially provide an interpretation of the time limit referred to in Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code, namely that the pretrial petition is declared dismissed when the first trial is commenced regarding the subject matter of the case for which the pretrial petition is submitted, regardless of the agenda of the said first trial. The Court's stance as stated in the Decision of the Constitutional Court Number 102/PUU-XIII/2015 is strengthened and reaffirmed in the Decision of the Constitutional Court Number 66/PUU-XVI/2018 and the Decision of the Constitutional Court Number 27/PUU-XXI/2023.

In connection with the above, if the *a quo* norm is interpreted as "it may not be re-submitted for review" as desired by the Petitioner, the Court is of the opinion that this will actually create legal uncertainty as referred in the Decision of the Constitutional Court Number 102/PUU-XIII/2015. This is because the function of pretrial institution is basically to control the implementation of the authority of investigators and public prosecutors before the subject matter of the case is examined by the court, so that the norm of limiting the time for pretrial examinations to 7 (seven) days is a rational and sufficient time limit for holding the pretrial hearings, because the object and the scope of pretrial have been defined in the *a quo* law and the decision of the Constitutional Court (*vide* Decision of the Constitutional Court Number 21/PUU-XII/2014 which was declared in a plenary session open to the public on 28 April 2015, p. 105-106), therefore it is irrelevant for a pretrial decision to be re-submitted for review. Moreover, if the time limit of 7 (seven) days from the first examination to complete the pretrial examination and trial is linked to the norms of Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code as interpreted in the Decision of the Constitutional Court Number 102/PUU-XIII/2015, namely that the pretrial petition is declared dismissed when the first trial is commenced regarding the subject matter being petitioned for pretrial as they are related to each other and complementary in nature, so that the pretrial institution does not require a judicial review mechanism. Therefore, the existence of the *a quo* norms is a clear time limit for pretrial examinations as pretrial institutions actually carry the principle of speedy trial. Moreover, these two norms are also intended to provide fair legal certainty regarding the subject matter of the case for which the pretrial petition is submitted. In other words, the time limit for examination and handling of pretrial cases have been regulated in a measurable and definite manner in the norms of the *a quo* article, including the new interpretation pursuant to the Court's decision. Moreover, if the Court follows the Petitioner's wish that the subject matter of the case should be postponed until the pretrial decision is finalized, this will actually give rise to injustice and legal uncertainty because the subject matter of the case is intertwined with, among other things, a time-limited detention period during which the defendant could potentially be released for legal reasons and other things. Therefore, the Court is of the opinion that the Petitioner's petition is clearly inconsistent and contrary to

the Court's stance in the Decision of the Constitutional Court Number 102/PUU-XIII/2015, the Decision of the Constitutional Court Number 66/PUU-XVI/2018, and the Decision of the Constitutional Court Number 27/ PUU-XXI/2023.

Whereas regarding the Petitioner's argument that he is concerned about the *a quo* norms can be used as an excuse to act arbitrarily by the court and thus injuring the party submitting the pretrial petition, the Court is of the opinion that this is an issue of norm implementation instead of the constitutionality issue of the *a quo* norm. Regarding this, if what is described in the petition is true, it is important for the Court to emphasize that all relevant law enforcement officers, *in casu* the justices are not justified in acting arbitrarily, because this arbitrary action, apart from being a violation of procedural (formal) law, it is also an act that violates the code of ethics. Therefore, if arbitrary actions are committed by the law enforcement officers, *in casu* the justices, then there is a legal mechanism available to dispute such arbitrary actions and unprofessional behavior of the justices, such as reporting the matter to the Judicial Commission. Moreover, by understanding the Decision of the Constitutional Court Number 102/PUU-XIII/2015, there should be coordination and synergy between the law enforcers so that there is no reason for the pretrial justices not to immediately carry out the trials of pretrial cases that have been submitted and to decide them immediately. Likewise, the panel of justices examining the subject matter of the case should carry out the procedural trial without having to consider whether or not there is a pretrial. Therefore, if what the petition of the Petitioner is granted, *quod non*, then the essence of the *a quo* norm and the spirit of the Court's decision will be lost and it will lead to legal uncertainty and injustice in the handling of criminal cases that are intertwined with the pretrial process. Therefore, it is important for the Court to confirm that in relation to the *a quo* norms there is no urgency for the Court to change its stance. Therefore, the *a quo* argument of the Petitioner is legally unjustifiable.

Whereas regarding the Petitioner's *petitum* which petitions for the review of Article 83 paragraph (1) of the Indonesian Criminal Procedure Code, after the Court carefully examined the Petitioner's petition, the Petitioner did not describe the legal arguments related to the conflict between the norms of Article 83 paragraph (1) of the Indonesian Criminal Procedure Code and the norms of the articles in the 1945 Constitution which are used as the basis for review. During the examination hearing, the Court confirmed this to the Petitioner, that the Court could not find the basis for the review. However, the Petitioner did not provide any explanation regarding the lack of reasons and basis for review. Pursuant to these facts, the Court is of the opinion that the Petitioner's petition regarding the unconstitutionality of Article 83 paragraph (1) of the Indonesian Criminal Procedure Code is unclear or obscure (*obscur*).

Therefore, pursuant to the entire description of the legal considerations above, the Court is of the opinion that the provisions in Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code have apparently provided fair legal certainty and provided protection for individuals, families, honor, dignity and the right not to be prosecuted on the basis of laws that apply retroactively as guaranteed in Article 28D paragraph (1) and Article 28I paragraph (1) and paragraph (5) of the 1945 Constitution, instead of as argued by the Petitioner. Thus, the Petitioner's petition regarding Article 82 paragraph (1) letter d of the Indonesian Criminal Procedure Code has no legal basis, whereas the Petitioner's petition regarding Article 83 paragraph (1) of the Indonesian Criminal Procedure Code is unclear or obscure (*obscur*).

Accordingly, the Court subsequently passed down a decision whose verdict states, as follows:

1. To declare that the Petitioner's petition regarding the review of the norms of Article 83 paragraph (1) of the Indonesian Criminal Procedure Code is inadmissible
2. To dismiss the remainder of the Petitioner's petition.